HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.Nos.15086 of 2003

Dated 26th day of September, 2007

Between:

M/s.Sri Lakshmi Marine Products Ltd.
rep. by its Managing Director,
Visakhapatnam ..
Petitioner

And

Industrial Credit & Investment Corporation
of India Limited, a Central Government of India
Undertaking, Ministry of Finance,
Having its Office at Bandra Kurla Complex,
Mumbai
and another ..
Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the respondents in not accepting the balance 30% of the principal amount as per One Time Settlement (for short "O.T.S.") Scheme, Option-B, as arbitrary, illegal and *ultra vires* to the provisions of Articles 14 and 19(1)(g) of the Constitution of India.

The case of the petitioner is that it is a Limited Company, which was incorporated under the provisions of the Company Act. For the purpose of construction and acquisition of one Fishing Trawler, the petitioner approached the 1st respondent for financial assistance, and accordingly, an amount of Rs.71,10,750/- was granted by the 1st respondent as loan on 7.8.1989. However, as the entire Acquaculture business including deep-sea fishing industry suffered several set-backs, the Government of India, having considered various proposals for rehabilitation of the deep-sea fishing industry and the Acquaculture business, decided to provide rehabilitation reliefs and finalized a scheme. As per that scheme, there are two options, one is rehabilitating the sick unit and the other is One Time Settlement. As per Clauses 3.1.1 and 3.1.2 of the Scheme, if any industry opts for the second one i.e. payment on the basis of O.T.S., the penal interest and overdue interest (including capitalized pre-delivery interest) and 70% of the principal amount as on the cut-off date shall be written off and the balance 30% of the principal amount as on the cut-off date would

be reckoned as outstanding principal and shall be paid upfront as one single payment on or before 3.11.1997. In pursuance of the scheme, the petitioner gave an application opting for the payment by way of O.T.S. along with a Demand Draft No.56477, dated 29.7.1997, for Rs.2.00 lakhs towards Earnest Money Deposit, which was acknowledged by the 1st respondent on 2.8.1997. Later, the 1st respondent informed the petitioner that a sum of Rs.10,48,000/- together with interest thereon till the date of payment of principal amount of guarantee has become due and directed it to pay the same. However, the petitioner did not pay the amount. Hence, the O.T.S. arrived at between the parties could not be worked out. When the petitioner again approached the 1st respondent and offered to pay the amount, another One Time Settlement scheme was entered into, according to which, an amount of Rs.45.00 lakhs was to be paid. Even as per the second O.T.S., the petitioner did not pay the amount in time, but addressed a letter, dated 22.8.2002 seeking extension of time to pay the amount, for which, the 1st respondent, in principle, agreed and addressed a letter dated 31.10.2002 stating that the petitioner shall pay Rs.10.00 lakhs upfront and the balance amount of Rs.35.00 lakhs in four instalments from 15.9.2002 to 31.7.2003 together with interest at the rate of 14.5% on its delayed payment w.e.f. 24.8.2002 till the date of payment and the company shall give an undertaking that it would not seek any further extension of time. Accordingly, the petitioner paid an amount of Rs.10.00 lakhs, but did not pay the balance amount of Rs.35.00 lakhs. As there was a threat of seizing the Fishing Trawler, the petitioner submitted a representation dated 12.11.2002 requesting the respondents to reconsider its decision and permit it to pay balance 30% of the principal loan amount as per the Scheme. Now, the petitioner's grievance is that when it is entitled to pay balance 30% of the principal loan amount as outstanding as per the Scheme for

Rehabilitation, the respondents are demanding it to pay an amount of Rs.45.00 lakhs.

The 1st respondent-I.C.I.C.I. Bank filed a detailed counter stating that the petitioner-company had never given effect to any of the agreements entered into and did not repay the loan amount, and hence, it cannot crave for any indulgence.

Heard Sri V.S.R.Anjaneyulu, learned counsel for the petitioner, Sri S.Niranjan Reddy, learned standing counsel for Industrial Credit & Investment Corporation of India Limited and perused the material placed on record.

Prima facie, this Court is of the view that the petitioner is not entitled for the relief sought for. The relief sought for in this writ petition is to direct the respondents to accept the payment of balance 30% of the principal amount from the petitioner as per the terms of the Scheme for Rehabilitation. Had the petitioner paid the amount of Rs.10.00 lakhs as fixed by the Government of India, definitely it would have been entitled for the relief. Taking various circumstances into consideration, the Government of India finalized a Scheme for Rehabilitation and the petitioner did not take advantage of it. As per the scheme, the cut-off date for payment of balance 30% of principal amount is 3.11.1997. Though the petitioner gave an application stating that it opts to pay the amounts under O.T.S. and deposited Earnest Money of Rs.2.00 lakhs on 2.8.1997, it did not stick on to its word and pay the balance 30% of the principal amount under O.T.S. on or before 3.11.1997, and hence, the petitioner is not entitled for the benefits as contemplated under the Scheme for Rehabilitation. However, as the petitioner again approached the 1st respondent, who, in principle, agreed for payment of Rs.45.00 lakhs as O.T.S. and the petitioner had already paid an amount of Rs.10.00 lakhs as per the proceedings dated 13.4.1999 (the learned counsel for the respondents

disputes the said payment), this Court is of the view that the petitioner, though is not entitled to the terms of the Scheme for Rehabilitation, can be directed to pay the balance amount of Rs.45.00 lakhs as per the O.T.S. agreed upon by the 1st respondent in his letter dated 31.10.2002.

In the result, this Writ petition is disposed of with a direction to the petitioner to pay the amount of Rs.45.00 lakhs together with interest at the rate of 12% per annum within a period of three months from the date of receipt of a copy of this order. The interest shall be calculated from 31.10.2002 and Rs.10.00 lakhs, which is in dispute, shall be looked into, and if the petitioner had already paid Rs.10.00 lakhs, the same shall be deducted from the amount of Rs.45.00 lakhs. No costs.

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26.09.2007

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